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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,104	06/15/2001	Kiril A. Pandelisev	PHOENIX SCIENTIFIC	7265

7590

08/30/2002

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EXAMINER

GAGLIARDI, ALBERT J

ART UNIT

PAPER NUMBER

2878

DATE MAILED: 08/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/881,104

Applicant(s)

PANDELISEV, KIRIL A.

Examiner

Albert J. Gagliardi

Art Unit

2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-132 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-132 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to at least the following patentably distinct species of the claimed invention:

Species 1, relating to scintillator apparatus and methods utilizing plural individual scintillator bodies and a holder for holding the scintillator bodies (see, for example Fig. 5).

Species 2, relating to scintillator apparatus and methods utilizing a single scintillator body and a photodetector (see for example Fig. 4)

Species 3, relating to scintillator apparatus and methods utilizing a single scintillator body and an optical viewing means and a light source (No apparent specific figure)

Species 4, relating to scintillator apparatus and methods utilizing a scintillator plate and a gamma ray window (see for example Fig. 12).

Species 5, relating to scintillator apparatus and methods utilizing a single scintillator body and a photodetector in combination with an optical viewing means and a light source (no specific figure).

Species 6, relating to scintillator apparatus and methods utilizing plural individual scintillator bodies in combination with a photodetector and also in combination with an optical viewing means and a light source (see for example Fig. 16).

Species 7, relating to scintillator apparatus and methods utilizing a scintillator plate and a gamma ray window in combination with an optical viewing means and a light source (see for example Fig. 18).

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The examiner notes that the above species are merely exemplary and that there may be other species that have not been specifically identified.

2. The examiner also notes that at least some of the species are also related inventions in that they are related as subcombinations (species 1-4) disclosed as usable together in a single combination, or related as combination and subcombination (species 5-7 including respective subcombination species 1-4).

Regarding the subcombination inventions (species 1-4), the subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, each of the subcombinations has separate utility such as for use in detecting plural discrete wavelengths or bands including spectroscopy (species 1), radiation dosimetry (species 2) remote viewing applications including endoscopy (species 3) and x-ray or gamma ray medical imaging (species 4). See MPEP § 806.05(d).

Regarding the combination (species 5-7) and subcombination (species 1-4) inventions, inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations. In the instant case, the combinations as claimed do not require the particulars of the subcombinations as separately claimed because independent claims 1, 67, and 81, for example, are evidence claims that provide evidence that the combination claims do not require the particulars of subcombination for patentability. The subcombination has separate utility as described above. (See MPEP § 806.05(c).

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter (i.e., spectroscopy, dosimetry, remote viewing and endoscopy, and medical imaging, restriction for examination purposes as indicated is proper.

4. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 34 appear to be generic.

5. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

6. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP §809.02(a).

7. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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8. No telephone call was made to request an oral election to the above restriction requirement because of the complexity of the restriction (high number of claims --in excess of fifty).

9. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Albert J. Gagliardi whose telephone number is (703) 305-0417. The examiner can normally be reached on Monday thru Friday from 9 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703) 308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



Albert J. Gagliardi
Examiner
Art Unit 2878

AJG
August 28, 2002